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6 Attorneys for Defendant  
 7 LIBERTY MUTUAL FIRE INSURANCE  
 COMPANY

8 UNITED STATES DISTRICT COURT  
 9 NORTHERN DISTRICT OF CALIFORNIA

10  
 11 R&L BROSAMER, INC.,

CASE NO. CV 08-03607 BZ

12 Plaintiff,

**DEFENDANT LIBERTY MUTUAL FIRE  
 INSURANCE COMPANY'S ANSWER TO  
 COMPLAINT**

13 v.  
 14 LIBERTY MUTUAL FIRE INSURANCE  
 COMPANY; AND DOES 1-15,

**DEMAND FOR JURY TRIAL  
 [Fed. R. Civ. Proc., Rule 38(b)]**

15 Defendant.

16  
 17 Defendant LIBERTY MUTUAL FIRE INSURANCE COMPANY ("Liberty Mutual") in  
 18 answer to the Complaint of Plaintiff R&L Brosamer on file herein, and to each and every cause of  
 19 action contained therein, admits, denies and alleges as follows:

20 1. Answering the allegations contained in paragraph 1 of the Complaint, Liberty  
 21 Mutual admits that a case entitled *Salmeron v. R&L Brosamer, Inc., et al.*, Case No. OAK  
 22 0333041 ("workers' compensation proceeding"), was initiated against plaintiff wherein the  
 23 claimant in that matter sought workers' compensation benefits under the workers' compensation  
 24 policy issued to plaintiff by Liberty Mutual. Liberty Mutual further admits that the claimant in  
 25 the workers' compensation action alleged that plaintiff was an employer of the decedent at the  
 26 time of the accident. As to the remaining allegations contained in paragraph 1 of the Complaint  
 27 regarding the facts of the accident, Liberty Mutual admits the allegations on information and  
 28 belief.

1           2.       Answering the allegations contained in paragraph 2 of the Complaint, Liberty  
2 Mutual admits it is a corporation organized under the laws of the State of Wisconsin with its  
3 principal place of business in Boston, Massachusetts. Liberty Mutual further admits that it is  
4 licensed to transact insurance business in the State of California.

5           3.       Answering the allegations contained in paragraph 3 of the Complaint, Liberty  
6 Mutual lacks sufficient information to admit or deny the allegations, and on that basis denies each  
7 and every allegation contained therein.

8           4.       Answering the allegations contained in paragraph 4 of the Complaint, Liberty  
9 Mutual denies each and every allegation contained therein.

10          5.       Answering the allegations contained in paragraph 5 of the Complaint, Liberty  
11 Mutual admits that plaintiff tendered the defense and indemnity of the workers' compensation  
12 proceeding to Liberty Mutual. Liberty Mutual further admits that it retained the law firm of  
13 Laughlin, Falbo, Levy & Moresi, LLP, to represent plaintiff and Liberty Mutual in the workers'  
14 compensation proceeding. As to the remaining allegations contained in paragraph 5, Liberty  
15 Mutual denies each and every allegation contained therein.

16          6.       Answering the allegations contained in paragraph 6 of the Complaint, Liberty  
17 Mutual admits that plaintiff requested that it admit a special employment relationship existed  
18 between plaintiff and the decedent for the workers' compensation proceeding. As to the  
19 remaining allegations contained in paragraph 6, Liberty Mutual denies each and every allegation  
20 contained therein.

21          7.       Answering the allegations contained in paragraph 7 of the Complaint, Liberty  
22 Mutual admits that David Hughes and law firm of Laughlin, Falbo, Levy & Moresi, LLP  
23 substituted out as counsel from the workers' compensation proceeding and that plaintiff asked  
24 Liberty Mutual to pay for John Parente to represent plaintiff. As to the remaining allegations  
25 contained in paragraph 7, Liberty Mutual denies each and every allegation contained therein.

26          8.       Answering the allegations contained in paragraph 8 of the Complaint, Liberty  
27 Mutual admits that Mr. Hughes submitted two Substitution of Attorneys forms to substitute the  
28 firm of Santana & Hart as counsel for Liberty Mutual and John Parente as counsel for plaintiff.

1 Liberty Mutual further admits the plaintiff requested that it pay for the services of Mr. Parente.  
2 As to the remaining allegations contained in paragraph 8, Liberty Mutual denies each and every  
3 allegation contained therein.

4 9. Answering the allegations contained in paragraph 9 of the Complaint, Liberty  
5 Mutual denies each and every allegation contained therein.

6 10. Answering the allegations contained in paragraph 10 of the Complaint, Liberty  
7 Mutual admits that plaintiff was sued as a defendant in a civil action entitled *Salmeron v. R&L*  
8 *Brosamer, Inc., et al.*, Case No. C08-000163 ("the civil action"), in the Superior Court of  
9 California, County of Contra Costa. As to the remaining allegations contained in paragraph 10,  
10 Liberty Mutual denies each and every allegation contained therein.

11 11. Answering the allegations contained in paragraph 11 of the Complaint, Liberty  
12 Mutual denies each and every allegation contained therein.

13 12. Answering the allegations contained in paragraph 12 of the Complaint, Liberty  
14 Mutual admits that by letter dated May 6, 2008, it denied coverage under its workers'  
15 compensation policy for the civil action, the contents of which speak for itself. As to the  
16 remaining allegations contained in paragraph 12, Liberty Mutual denies each and every allegation  
17 contained therein.

18 13. Answering the allegations contained in paragraph 13 of the Complaint, Liberty  
19 Mutual admits that in April 2008, it retained coverage counsel and advised plaintiff that it should  
20 communicate with such counsel regarding the coverage issues concerning payment of defense by  
21 John Parente in the workers' compensation proceeding. As to the remaining allegations  
22 contained in paragraph 13, Liberty Mutual denies each and every allegation contained therein.

23 14. Answering the allegations contained in paragraph 14 of the Complaint, Liberty  
24 Mutual incorporates by reference herein each of its admissions, denials and allegations contained  
25 in its responses to paragraphs 1 through 13 of the Complaint as though fully set forth herein.

26 15. Answering the allegations contained in paragraph 15 of the Complaint, Liberty  
27 Mutual denies each and every allegation contained therein.

28 16. Answering the allegations contained in paragraph 16 of the Complaint, Liberty

1 Mutual admits that plaintiff has tendered its defense and indemnity of the claims in the workers'  
2 compensation proceeding and the civil action to Liberty Mutual. As to the remaining allegations  
3 contained in paragraph 16, Liberty Mutual denies each and every allegation contained therein.

4 17. Answering the allegations contained in paragraph 17 of the Complaint, Liberty  
5 Mutual denies each and every allegation contained therein.

6 18. Answering the allegations contained in paragraph 18 of the Complaint, Liberty  
7 Mutual denies each and every allegation contained therein.

8 19. Answering the allegations contained in paragraph 19 of the Complaint, Liberty  
9 Mutual incorporates by reference herein each of its admissions, denials and allegations contained  
10 in its responses to paragraphs 1 through 18 of the Complaint as though fully set forth herein.

11 20. Answering the allegations contained in paragraph 20 of the Complaint, Liberty  
12 Mutual denies each and every allegation contained therein.

13 21. Answering the allegations contained in paragraph 21 of the Complaint, Liberty  
14 Mutual denies each and every allegation contained therein.

15 22. Answering the allegations contained in paragraph 22 of the Complaint, Liberty  
16 Mutual denies each and every allegation contained therein.

17 23. Answering the allegations contained in paragraph 23 of the Complaint, Liberty  
18 Mutual incorporates by reference herein each of its admissions, denials and allegations contained  
19 in its responses to paragraphs 1 through 22 of the Complaint as though fully set forth herein.

20 24. Answering the allegations contained in paragraph 24 of the Complaint, Liberty  
21 Mutual admits there exists a dispute over the rights, liabilities, and duties of Liberty Mutual and  
22 plaintiff.

23 25. Answering the allegations contained in paragraph 25 of the Complaint, Liberty  
24 Mutual admits that it disputes liability in this matter. As to the remaining allegations contained in  
25 paragraph 25, Liberty Mutual denies each and every allegation contained therein.

26 26. Answering the allegations contained in paragraph 26 of the Complaint, Liberty  
27 Mutual denies each and every allegation contained therein.

**FIRST AFFIRMATIVE DEFENSE****(Failure to State a Claim)**

AS A FIRST, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF ACTION CONTAINED THEREIN, Liberty Mutual alleges that said Complaint fails to state facts sufficient to constitute a cause of action against this answering defendant.

**SECOND AFFIRMATIVE DEFENSE****(Conditions Precedent)**

AS A SECOND, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT ON FILE HEREIN AND TO EACH ALLEGED CAUSE OF ACTION CONTAINED THEREIN, Liberty Mutual alleges that at all times and places mentioned in the Complaint herein, plaintiff failed to perform certain conditions precedent to the duty of defendant. These conditions precedent were imposed upon plaintiff by contract. The non-performance of said conditions excused defendants' obligations under the contracts and has given defendants the right of disaffirmance, rescission and release; plaintiff is therefore barred from recovery herein.

**THIRD AFFIRMATIVE DEFENSE****(No Coverage/Barred by Terms and Conditions)**

AS A THIRD, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT ON FILE HEREIN AND TO EACH ALLEGED CAUSE OF ACTION CONTAINED THEREIN, Liberty Mutual alleges that the claims alleged against defendant, in whole or in part, do not fall within the scope of the coverage or are barred by the terms, conditions, definitions, exclusions, and the limitations contained in the policy.

**FOURTH AFFIRMATIVE DEFENSE****(Waiver and Estoppel)**

AS A FOURTH SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF ACTION CONTAINED THEREIN, Liberty Mutual alleges that plaintiff has waived and/or is estopped from asserting any claim against Liberty Mutual by its own acts and omissions with respect to the events and

1 occurrences cited in said complaint, and its failure to adequately protect its own interests.

2 **FIFTH AFFIRMATIVE DEFENSE**

3 **(Procedural Due Process)**

4 AS A FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT  
5 ON FILE HEREIN AND TO EACH ALLEGED CAUSE OF ACTION CONTAINED  
6 THEREIN, Liberty Mutual alleges that plaintiff's complaint, to the extent that it seeks exemplary  
7 or punitive damages pursuant to section 3294 of the Civil Code, violates Liberty Mutual's right to  
8 procedural due process under the Fourteenth Amendment of the United States Constitution, and  
9 the Constitution of the State of California, and therefore fails to state a cause of action upon  
10 which either punitive or exemplary damages can be awarded.

11 **SIXTH AFFIRMATIVE DEFENSE**

12 **(Excessive Fines)**

13 AS AN SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT  
14 ON FILE HEREIN AND TO EACH ALLEGED CAUSE OF ACTION CONTAINED  
15 THEREIN, Liberty Mutual alleges that plaintiff's complaint, to the extent that it seeks punitive or  
16 exemplary damages pursuant to section 3294 of the Civil Code, violates defendant's rights to  
17 protection from "excessive fines" as provided in the Eighth Amendment of the United States  
18 Constitution and Article I, Section 17, of the Constitution of the State of California, and violates  
19 Liberty Mutual's rights to substantive due process as provided in the Fifth and Fourteenth  
20 Amendments of the United States Constitution and the Constitution of the State of California, and  
21 therefore fails to state a cause of action supporting the punitive or exemplary damages claimed.

22 **SEVENTH AFFIRMATIVE DEFENSE**

23 **(Substantive Due Process)**

24 AS AN SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE  
25 COMPLAINT ON FILE HEREIN AND TO EACH ALLEGED CAUSE OF ACTION  
26 CONTAINED THEREIN, Liberty Mutual alleges on information and belief, and on that basis  
27 allege, that plaintiff's complaint, and each cause of action stated therein, violates Liberty  
28 Mutual's rights to substantive due process as provided in the Fifth and Fourteenth Amendments

1 of the United States Constitution and the Constitution of the State of California, and therefore  
 2 fails to state a cause of action supporting the exemplary or punitive damages claimed.

3 **EIGHTH AFFIRMATIVE DEFENSE**

4 **(Breach of Contract)**

5 AS A EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT  
 6 ON FILE HEREIN AND TO EACH ALLEGED CAUSE OF ACTION CONTAINED  
 7 THEREIN, Liberty Mutual alleges plaintiff breached the implied covenant of good faith and fair  
 8 dealing, and/or the express contract terms and conditions, contained in the policy issued to  
 9 plaintiff by Liberty Mutual and plaintiff is therefore barred from recovery herein.

10 WHEREFORE, Liberty Mutual prays for judgment as follows:

11 1. That plaintiff takes nothing by its Complaint;  
 12 2. For costs of suit incurred herein; and  
 13 3. For such other and further relief as the Court deems proper.

14 Dated: August 4, 2008

ROPERS, MAJESKI, KOHN & BENTLEY

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PAMELA E. COGAN  
 JENNIFER A. WILLIAMS.  
 Attorneys for Defendant LIBERTY  
 MUTUAL FIRE INSURANCE COMPANY

**DEMAND FOR JURY TRIAL**

Defendant Liberty Mutual Fire Insurance Company hereby demands a trial by jury  
 pursuant to Rule 38, subdivision (b) of the Federal Rules of Civil Procedure.

Dated: August 4, 2008

ROPERS, MAJESKI, KOHN & BENTLEY

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 Attorneys for Defendant LIBERTY  
 MUTUAL FIRE INSURANCE COMPANY